

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

BABUBHAI JETHABHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR JAYANT PATEL for Petitioners
MR SN SHELAT, ADDL. AG with MR AD OZA,
GOVERNMENT PLEADER for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2, 5, 6
MR HS MUNSHAW for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of Judgment: 20/10/2000

CAV JUDGMENT

In this petition under Article 226 of the Constitution, 10 members of the Kahoda Gram Panchayat have challenged the Government notification dated 31.12.1999 shifting village Kahoda from Siddhpur taluka

in Patan District and placing it in Unjha taluka in Mehsana District. The first ten petitioners are members of the Kahoda Gram Panchayat. The eleventh petitioner is a resident of village Kahoda.

2. Prior to reconstitution of the districts and talukas in October, 1997, Kahoda was in Siddhpur taluka in Mehsana District. Mehsana District came to be bifurcated into Mehsana District and Patan District. Siddhpur taluka came to be bifurcated into Siddhpur taluka placed in Patan District and Unjha taluka placed in Mehsana District. Thereupon by notification dated 15.10.1997 village Kahoda came to be included in Unjha taluka. Subsequently by notification dated 4.12.1997, Kahoda was shifted from Unjha Taluka and included in Siddhpur taluka. By the impugned notification dated 31.12.1999, Kahoda has again been shifted from Siddhpur taluka to Unjha taluka. The petitioners have challenged the aforesaid notification dated 31.12.1999 mainly on the following grounds :-

I The legal grounds of challenge are as under :-

- (a) The mandatory procedure of consulting the District Panchayat and Taluka Panchayat is not followed either under Section 9 of the Gujarat Panchayats Act or under Section 7 of the Bombay Land Revenue Code.
- (b) There is breach of principles of natural justice as no opportunity of hearing has been given to the residents of Kahoda or to the Gram Panchayat.

II It is further contended that the impugned decision is arbitrary, because -

- (i) The distance between Siddhpur and Kahoda is only 8 kms. whereas the distance between Kahoda and Unjha is 13 kms.
- (ii) Village Kahoda has direct transport facilities such as road and State Transport connection facilities with Siddhpur and not with Unjha.
- (iii) The people in village Kahoda have business relations with Siddhpur as about 700 agriculturists come to Siddhpur for selling their vegetables since Siddhpur has the main vegetables market which is not there in Unjha. Kahoda falls in Siddhpur Agricultural Produce Market

Committee.

- (iv) Earlier Kahoda was in Siddhpur taluka. When reconstitution of the talukas took place on 15.10.1997, it was included in Unjha taluka, but thereafter upon representation of the people, Kahoda village was included in Siddhpur taluka as per the notification dated 31.12.1997. When this notification was challenged in Special Civil Application No. 9252/97, an affidavit was filed on behalf of the Government justifying the inclusion of Kahoda village in Siddhpur taluka.

III Malafides

The power has been exercised mala fide under political pressure of respondent No. 6 who is the Minister of Panchayats with a view to increasing the voters supporting respondent No. 6 in Unjha taluka and slice down the supporters of an MLA of Siddhpur taluka.

3. On the other hand, affidavit in reply has been filed by Mr N.D. Bhatt, Under Secretary, Revenue Department of the State Government submitting, inter alia, that-

- (i) inclusion of a village in a particular taluka is a policy decision taken by the State Government after due deliberations and after considering the relevant aspects of the matter and that in a petition under Article 226 of the Constitution, this Court would not sit in appeal over such decision. The decision to exclude village Kahoda from Siddhpur taluka and include the same in Unjha taluka is taken by the Cabinet Committee in its meeting held on 22.12.1999 and on the basis of the said decision the impugned notification dated 31.12.1999 has been issued.
- (ii) No right is conferred upon any particular person to have a particular village included in a particular taluka in a particular district nor is there any right of hearing conferred whether on the village Panchayat or on the village people.
- (iii) Unjha is having all the facilities. Direct road connection and S.T. Corporation bus is available for travelling from Kahoda to Unjha which is at a distance of 13 Kms. Unjha also has a bigger market yard. People of village Kahoda have

business relations with Unjha as well as with Siddhpur and in comparison to Siddhpur, Unjha is a bigger taluka place and having all market facilities.

(iv) The impugned decision has been taken after the Cabinet Sub Committee submitted its report and after due consideration. The decision has not been taken by any single Minister as such.

4. In a separate judgment delivered today in Special Civil Application No. 10459 of 1999, this Court has already examined the legal contentions regarding the interpretation of the provisions of Section 7 of the Bombay Land Revenue Code, 1879 and Section 9 of the Gujarat Panchayats Act, 1993 and also the contention about the application of the principle of audi alteram partem in such matters. For the reasons already recorded therein, this Court reiterates the view taken in the said decision that the village panchayat, members of the village panchayat or the residents of the village do not have any right to be heard before the State Government exercises its powers under the provisions of Section 7 of the Bombay Land Revenue Code for including a particular village in a particular taluka or to shift/exclude it from one taluka and to include it in another taluka.

ON FACTS :

5. It is true that village Kahoda is closer to Siddhpur as the distance between two places is 8 kms. whereas the distance between Kahoda and Unjha is 13 kms., but as per the stand of the respondents, there are road facilities as well as facilities of S.T. Corporation buses and Unjha also has a bigger market yard. Moreover, merely because Unjha is the taluka headquarter, the residents of the village are not prevented from going to Siddhpur for their business activities at Siddhpur. Hence, none of the legal rights of the residents of the village can be said to have been violated.

6. It is true that when Kahoda was shifted from Siddhpur taluka to Unjha taluka by Government notification dated 30.12.1997 and that notification was challenged in Special Civil Application No. 9252/97, affidavit in reply dated 2.3.1998 came to be filed by Mr V.N. Chauhan, Under Secretary to the Government of

Gujarat in the Revenue Department justifying the said decision on the following grounds :-

- (i) The distance between Siddhpur and Kahoda is approximately 7.5 kms. whereas the distance between Unjha and Kahoda is approximately 12 kms. (Para 10).
- (ii) The villagers had demanded the inclusion of village Kahoda in Siddhpur taluka.
- (iii) The villages situate above the Kheralu-Patan Road were placed in Siddhpur taluka and the village situate below the said Kheralu-Patan Road were placed in Unjha taluka. Kahoda and Kanesara are situate above the said Kheralu-Patan Road and were, therefore, placed in Siddhpur taluka.

It is also true that the affidavit in reply dated 2.5.2000 filed by Mr N.D. Bhatt, Under Secretary to the Government of Gujarat in Revenue Department filed in the present petition raises general defences about the power of the State Government under Section 7 of the Bombay Land Revenue Code, 1879 and the legal contention to the effect that this Court would not interfere with such decisions in petitions under Article 226 of the Constitution, but the affidavit does not throw much light on the factual aspects of the case nor does it give any specific reason for the impugned decision except stating that the decision was taken by the State Government as per the recommendation of the Cabinet Sub-Committee constituted for review of bifurcation of Districts/Talukas which meeting was held on 21.12.1999 after discussions with the concerned Hon'ble Ministers/Ministers of State. Thereafter the same was placed before the Cabinet on 22.12.1999 which decided to accept the said recommendation. The affidavit, therefore, does not indicate any specific reason for the aforesaid decision and as to why the Government decided to change the previous decision contained in the Government notification dated 31.12.1997.

7. Even so, the question is whether this Court should interfere with the impugned decision as arbitrary. In *Tata Cellular vs. Union of India*, AIR 1996 SC 11, the Apex Court has held that the power of judicial review of administrative action is not to be exercised by sitting in appeal over the merits of such decision, but the Court merely reviews the manner in which the decision was made. Of course, in paras 93 and 94 the Court did observe that the judgment of the Court would also extend to examining

whether the impugned decision is such that no reasonable authority would have reached or the authority has abused its powers. In para 95 of the judgment, the Apex Court also observed that in all these cases of judicial review of administrative action, "the test to be adopted is that the Court should consider whether something has gone wrong of a nature and degree which requires its intervention."

8. In the facts of the present case, more particularly in absence of any specific prejudice shown as likely to be caused by the impugned decision or in absence of any violation of any specific civil right of the residents of village Kahoda, it cannot be said that on account of the impugned decision something has gone wrong of a nature and degree which requires the intervention of the Court in exercise of its jurisdiction under Article 226 of the Constitution. This does not, however, preclude the village people or the Kahoda Gram Panchayat from approaching the State Government for reconsidering its decision if the village people/gram panchayat makes out any specific case of any prejudice to the village people on account of the impugned decision.

9. While, therefore, holding that the petitioners have not made out any case for interference of this Court under Article 226 of the Constitution, the petition is dismissed with an observation that dismissal of the petition shall not be taken as an expression of any opinion about the merits of the demand raised in the petition for which the village people/gram panchayat of Kahoda shall be at liberty to make a representation to the State Government. As and when such a representation is made, the State Government shall consider the same within two months from the date of the representation without being deterred by the fact that this Court has dismissed the petition only on the ground that the Court does not sit in appeal over such policy decisions and ordinarily the Court does not interfere with such decisions in petitions under Article 226 of the Constitution.

10. Subject to the aforesaid observations, the petition is dismissed. Rule is discharged. There shall be no order as to costs. The ad-interim order dated 5.1.2000 for maintaining status quo is vacated.

(M.S. Shah, J.)

At this stage, Mr Jayant Patel, learned counsel

for the petitioners prays that the ad-interim relief granted earlier may be continued for sometime in order to enable the petitioner to have further recourse in accordance with law.

The ad-interim relief granted earlier shall continue till 15.12.2000.

October 20, 2000 (M.S. Shah, J.)

sundar/-